

REMARKS

The Examiner has restricted the claims in the case to:

- Species I, illustrated by FIGS. 1-18, 22a-22d, and 23c-23e, and represented in claims 1-42, directed to an embodiment of a turnout section or switchrail for railway track, including various views and components.
- Species II, illustrated by 19a-19f and 23a-23b, directed to an alternative embodiment of a switchrail.
- Species III, illustrated by FIGS. 20a-20d, directed to an alternative embodiment of a crossing rail.
- Species IV, illustrated by FIGS. 21a-21d, directed to alternative views of the crossing rail of Species III.
- Species V, illustrated by 24a-35b, directed to an embodiment for an alternative turnout section as claimed in a co-pending application and included for comparison/teaching purposes.
- Species VI, illustrated by FIGS. 36a-36f, directed to an embodiment for a crossover section mounted on a support plate.
- Species VII, illustrated by FIGS. 37a-37e, directed to an embodiment for a switchrail mounted on a support plate.
- Species VIII, illustrated by FIGS. 38a-38b, directed to an embodiment of a temporary non-intrusive turnout.
- Species IX, illustrated by FIGS. 39a-39d, directed to an embodiment for a ramp for use with a crossover section or a switchrail.

Applicant respectfully traverse at least a portion of the Restriction Requirement and request reconsideration. The inventions of Species III and Species IV are equivalent in scope when all limitations of the Species are considered and do not present a burden on the Examiner to search the limitations of each Species. In particular, as defined by the present application, FIGS. 21a-21d (i.e., Species IV) merely illustrate alternative views of the crossing rail as shown in FIGS. 20a-20d (i.e., Species III). *See* the application as filed at 17:3-12. Similarly, FIGS. 38a and 38b (i.e., Species VIII) illustrate a undulating nature of the rail track as is required by generic claim 1. Claim 1 includes a section of track configured such that wheels of a train car are “raised by the first portion to a first rail crossing height and then lowered by the second portion to a

height at a location between the pair of spaced apart rails.” FIGS. 38a and 38b illustrate this undulation in height. As such, there is no burden placed upon the Examiner by including the subject matter of Species VIII as the illustrated components are included in generic claim 1.

Restriction is only proper if “[t]here is a serious burden on the examiner if restriction is not required.” *See* MPEP § 803. Because the inventions of Species III and Species IV, and the invention of Species VIII and the Examiner acknowledged generic claim are equivalent in scope when compared, a serious burden is not placed on the Examiner with regard to these particular Species.

In view of the above remarks, applicant believes that at least a portion of the Restriction Requirement is not appropriate and that claims 1-42 should be prosecuted together in the present application. As such, Applicant submits that the application is in condition for examination and allowance on the merits. Nonetheless, Applicant provisionally elect Species I encompassing all pending claims as required by 37 CFR § 1.143.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required for this Amendment and Response, or credit any overpayment, to Deposit Account No. 50-0436.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "James M. Singer".

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